

**R. J. Stewart Co., Inc. and Plumbers and Pipefitters U.A. Local 276, AFL-CIO, a/w United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL-CIO.** Cases 1-CA-29557 and 1-CA-29649

August 31, 1993

**DECISION AND ORDER**

BY CHAIRMAN STEPHENS AND MEMBERS  
DEVANEY AND RAUDABAUGH

Upon charges filed by the Union in Case 1-CA-29557 July 16, 1992,<sup>1</sup> and in Case 1-CA-29649 August 18, 1992, the General Counsel of the National Labor Relations Board issued complaints against R. J. Stewart Co., Inc., the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act. The Respondent filed an answer, admitting in part and denying in part the allegations of the complaints. Thereafter, the General Counsel issued a notice of intent to amend complaints, containing the proposed amendments. Following the issuance of that notice, the Respondent, by letter addressed to counsel for the General Counsel and signed by its president, William E. Stewart, stated that "This is an amendment that I admit all allegations."

On June 11, 1993, the General Counsel filed a Motion for Summary Judgment. On June 17, 1993, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

**Ruling on Motion for Summary Judgment**

As we have noted, the Respondent has now admitted all allegations of the two complaints. Because we find that the acts alleged in the complaints, and admitted by the Respondent, violate Section 8(a)(5) and (1), we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

**FINDINGS OF FACT**

**I. JURISDICTION**

At all material times, the Respondent, a corporation with an office and place of business in Hanover, Massachusetts, has been engaged as a plumbing and pipefitting contractor in the building and construction industry doing commercial construction. During the calendar year ending December 31, 1992, the Respondent, in conducting its business operations just described,

<sup>1</sup> The charge in Case 1-CA-29557 was amended on August 18 and September 11, 1992.

provided services valued in excess of \$50,000 for Tedeschi Realty Corp., Pizza Hut Corporation, and Shaw's Supermarkets, Inc., enterprises in Massachusetts that are directly engaged in interstate commerce. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

**II. ALLEGED UNFAIR LABOR PRACTICES**

The following employees (the unit) constitute an appropriate unit for purposes of collective bargaining under Section 9(b) of the Act:

All plumbing and pipefitting employees employed by the Respondent, but excluding all other employees, guards and supervisors as defined in the Act.

At all material times, the New England Mechanical Contractors Association, Incorporated (the Association) has been an organization composed of various employers engaged in the construction industry, and that exists for the purpose, inter alia, of representing its employer-members in negotiating and administering collective-bargaining agreements with various labor organizations, including the Union. About September 1, 1991,<sup>2</sup> the Association and the Union entered into a collective-bargaining agreement, effective from September 1, 1991, through August 31, 1992, and subsequently entered into a renewal agreement, effective from September 1, 1992, through August 31, 1993.

About September 5, 1986, the Respondent, an employer engaged in the building and construction industry, granted recognition to the Union as the exclusive collective-bargaining representative of employees in the unit by entering into an "Assent of Participation," which bound the Respondent to the terms and conditions of the collective-bargaining agreement then in effect between the Association and the Union and all successor agreements, including the 1991-1992 and 1992-1993 agreements, without regard to whether the majority status of the Union has ever been established under the provisions of Section 9 of the Act. For the period September 1, 1991, through August 31, 1993, the Union is the limited exclusive collective-bargaining representative of employees in the unit.<sup>3</sup>

<sup>2</sup> The complaints allege that this agreement was entered into September 1, 1992. That is evidently a typographical error. It is unlikely that the parties would have entered into an agreement that, by its terms, expired the day before. Moreover, the violations alleged and admitted are all predicated on an existing agreement, and all commenced well before September 1992. We find that the 1991-1992 agreement was entered into about September 1, 1991.

<sup>3</sup> See *John Deklewa & Sons*, 282 NLRB 1375, 1386-1387 (1987), enf. sub nom. *Iron Workers Local 3 v. NLRB*, 843 F.2d 770 (3d Cir. 1988).

*Continued*

Since about January 16, 1992, the Respondent, without the Union's consent, has failed and refused (1) to pay employees the wage rates set forth in the 1991–1992 and 1992–1993 agreements; (2) to make payments to the health and welfare, pension, education, and vacation fringe benefit funds set out in those agreements; and (3) to remit to the Union dues collected from employees pursuant to the two agreements. The foregoing terms and conditions of employment are mandatory subjects of collective bargaining.

Since about July 14, 1992, the Union has requested the Respondent to provide employees' names, addresses, dates of hire, wage rates, and (if applicable) dates of termination. The information requested is relevant to and necessary for the Union's performance of its duties as the limited exclusive bargaining representative of employees in the unit. Since about July 14, 1992, the Respondent has failed and refused to furnish the Union the requested information.

By failing and refusing to honor the terms of its collective-bargaining agreements with the Union in the manner described above, and by failing and refusing to provide relevant and necessary information to the Union at its request, the Respondent has failed and refused to bargain collectively and in good faith with the Union as the limited exclusive collective-bargaining representative of the unit employees within the meaning of Section 8(d) of the Act, in violation of Section 8(a)(5) and (1) of the Act.

#### CONCLUSION OF LAW

By failing and refusing to abide by the terms and conditions of its collective-bargaining agreements with the Union, and by failing and refusing to provide the Union with relevant and necessary information on request, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

#### REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease

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Par. 10 of each complaint states that the Respondent granted recognition to the Union as the exclusive bargaining agent of unit employees without regard to whether the majority status of the Union had ever been established pursuant to Sec. 9 of the Act. We find, therefore, that an 8(f) relationship has been established between the Respondent and the Union. However, par. 11 of each complaint alleges that the Union is the exclusive representative of the unit employees *based on Sec. 9(a)*. To the extent the latter allegations can be read to indicate that the Union has acquired full 9(a) status, they are inconsistent with each complaint's par. 10. Moreover, under *Deklewa*, an 8(f) signatory union does not attain full 9(a) status solely on the employer's adoption of an 8(f) agreement. We therefore find that the Union is the limited exclusive representative of the unit employees. See *GPH Mechanical*, 303 NLRB 510 fn. 1 (1991).

and desist and to take certain affirmative action designed to effectuate the policies of the Act.

Having found that the Respondent unlawfully failed to continue in full force and effect the terms and conditions of the 1991–1992 and 1992–1993 agreements, we shall order it to comply with the terms and conditions of the latter. Specifically, we shall order the Respondent to make the employees whole as follows: for any losses suffered as a result of the Respondent's failure to pay them the contractually required wages, plus interest; by making the contractually required payments to the fringe benefit funds on their behalf that would have been made but for the Respondent's failure to adhere to the agreements, with any interest or other sums applicable to those payments to be computed in accordance with the Board's decision in *Merryweather Optical Co.*, 240 NLRB 1213 (1979); and by reimbursing them, with interest, for any expenses or loss of benefits they may have suffered as a result of its failure to make the contractually required fringe benefit contributions, as prescribed in *Kraft Plumbing & Heating*, 252 NLRB 891 (1980), *enfd.* mem. 661 F.2d 940 (9th Cir. 1981). We shall also order the Respondent to remit to the Union, with interest, the union dues collected from the employees pursuant to the agreements. All backpay amounts shall be computed as prescribed in *Ogle Protection Service*, 183 NLRB 682 (1970), *enfd.* 444 F.2d 502 (6th Cir. 1971), and interest shall be computed as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

Having found that the Respondent unlawfully failed to furnish the Union the requested information, we shall order it to provide that information at the Union's request.

#### ORDER

The National Labor Relations Board orders that the Respondent, R. J. Stewart Co., Inc., Hanover, Massachusetts, its officers, agents, successors, and assigns, shall

##### 1. Cease and desist from

(a) Failing and refusing to pay employees the wage rates contained in its collective-bargaining agreements with Plumbers and Pipefitters U.A. Local 276, AFL–CIO, a/w United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL–CIO (the Union).

(b) Failing and refusing to make the payments to the health and welfare, pension, education, and vacation employee benefit funds called for in its collective-bargaining agreements with the Union.

(c) Failing and refusing to remit to the Union dues collected from employees pursuant to its collective-bargaining agreements with the Union.

(d) Failing and refusing to furnish the Union with requested information that is relevant to and necessary for the Union's performance of its duties as the limited exclusive collective-bargaining representative of the employees in the following appropriate unit:

All plumbing and pipefitting employees employed by the Respondent, but excluding all other employees, guards and supervisors as defined in the Act.

(e) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Adhere to the terms of the 1992–1993 collective-bargaining agreement with the Union, until it expires.

(b) Make whole the unit employees and, on their behalf, the health and welfare, pension, education, and vacation employee benefit funds, for any losses they have suffered as a result of the Respondent's failure since January 16, 1992, to adhere to the terms of the 1991–1992 and 1992–1993 agreements, in the manner set forth in the remedy section of this decision.

(c) On request, furnish the Union with information sought by the Union by letter about July 14, 1992.

(d) Remit to the Union, with interest, all dues collected from employees since January 16, 1992, pursuant to its collective-bargaining agreements with the Union.

(e) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, trust fund statements, and all other documents or records necessary to analyze the amount of backpay, fringe benefit payments, or union dues due under the terms of this Order.

(f) Post at its facility in Hanover, Massachusetts, copies of the attached notice marked "Appendix."<sup>4</sup> Copies of the notice, on forms provided by the Regional Director for Region 1, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

<sup>4</sup>If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

(g) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

## APPENDIX

### NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail and refuse to pay our employees the wage rates contained in our collective-bargaining agreements (agreements) with Plumbers and Pipefitters U.A. Local 276, AFL–CIO, a/w United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL–CIO (the Union).

WE WILL NOT fail and refuse to make the payments to the health and welfare, pension, education, and vacation employee benefit funds called for in our agreements with the Union.

WE WILL NOT fail and refuse to remit to the Union dues collected from our employees pursuant to our agreements with the Union.

WE WILL NOT fail and refuse to furnish the Union, on request, information that is relevant to and necessary for the Union's performance of its duties as the limited exclusive collective-bargaining representative of our employees in the following appropriate unit:

All plumbing and pipefitting employees employed by us, but excluding all other employees, guards and supervisors as defined in the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL adhere to the terms of our 1992–1993 agreement with the Union, until it expires.

WE WILL make whole, with interest, our unit employees and, on their behalf, the health and welfare, pension, education, and vacation employee benefit funds, for any losses they have suffered because of our failure since January 16, 1992, to adhere to the terms of our 1991–1992 and 1992–1993 agreements with the Union.

WE WILL, on request, furnish the Union the information it asked for in its letter of about July 14, 1992.

WE WILL remit to the Union, with interest, dues collected from our employees since January 16, 1992, pursuant to our agreements with the Union.

R. J. STEWART CO., INC.